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UB Viewpoint - AOL/Microsoft settlement could harm consumers

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AOL Time Warner and Microsoft recently settled their antitrust suit in a way that benefits both companies, but is likely to harm competition and consumer choice. Before this settlement, Microsoft dominated the Web browser market, but lacked control over the distribution of digital music and other multimedia content over the Internet. After this settlement, Microsoft is well on its way to erecting a tollbooth on the Internet through which all multimedia content must pass. Consumers will be caught in a vise grip, both when they enter the Internet and when they try to download multimedia content from it. AOL filed its antitrust suit because of Microsoft's anticompetitive behavior in the market for Internet browsers. This was challenged by the Department of Justice in its well-publicized 1998 complaint, and in 2001 the U.S. Court of Appeals held that Microsoft had violated the antitrust laws by illegally attempting to maintain its Windows operating system monopoly. Since AOL's browser had been the main victim of Microsoft's anticompetitive behavior, AOL had the right to file its own suit against Microsoft and ask for damages and relief that would restore competition to the affected market. Sadly, nothing in the announced settlement does anything to lessen Microsoft's monopoly grip on the browser market. Instead it gave AOL Time Warner \$750 million in cash and announced joint activity that is likely for three reasons to cement Microsoft's power over the Internet. First, it gives AOL a seven-year, royalty-free license to use Microsoft's browser. Although AOL's browser has been dying as a competitive force as a result of Microsoft's anticompetitive behavior, this agreement puts the final nails into its coffin. Second, it sends a signal that these two Internet giants have changed from competitors into partners. Fierce rivals in both the courtroom and the marketplace have in many respects become cozy. Third, it will help Microsoft dominate the digital rights management and with it the distribution of multimedia content on the Internet. The agreement provides that Microsoft's technology for encrypting and securing media content will be used by the Internet's largest service provider. This signals other media content providers that Microsoft's technology is well on the road to becoming dominant, so they should use Microsoft's products to ensure that AOL subscribers will be able to access their content. It also signals developers not to attempt to make competing encryption products because Microsoft is in the process of locking up this market. Before the settlement, Microsoft dominated access to the Internet. After this settlement, Microsoft is well on its way to dominating access to multimedia content on the Internet as well. Consumers will have no choice but to use Microsoft's products both coming and going. The precise terms of the settlement are private. The antitrust enforcers should scrutinize it carefully to determine whether it is anticompetitive.

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